

EXHIBIT 6

In The Matter Of:

*THE CITY OF NEW YORK, ET AL v.
EXXON MOBIL CORPORATION*

*VOLUME 39
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*TRIAL
SOUTHERN DISTRICT REPORTERS
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[1] A. Yes. The area that I've depicted in blue is what I would
[2] call the area served directly -- well, blue and orange is what
[3] I would call the areas served directly by New York Harbor.
[4] In addition, New York Harbor is the source of a large
[5] part of the gasoline that's consumed by New England because
[6] it's the last stop for those pipelines that come up to Linden,
[7] New Jersey, and then from there it moves from the kind of
[8] commingled pool in New York Harbor up to New England. And I
[9] calculated that that was about 45 million barrels per year.
[10] Q. And did you also calculate for the entirety of New England
[11] what the total number of millions of barrels per year would be
[12] for all of New England based on shipping out of the New York
[13] Harbor?
[14] A. Yes, I did. This 45 -- I'm sorry. Go back for a second.
[15] This 45 was actually one of the harder things to come
[16] up with, because we do not have data on shipments of
[17] reformulated gasoline from New York Harbor to New England
[18] because it's only the Army Corps of Engineers that has that
[19] data, and they don't care whether it is reformulated gasoline
[20] or regular gasoline. So I had to do a more complicated set of
[21] calculations to essentially back out that 45 million barrels
[22] per year.
[23] Q. And with regard to New England, did you prepare a graphic
[24] showing the area you were looking at for analysis of what the
[25] demand would be in New England for the entire area?

[1] doing slide 17?
[2] MR. STACK: Perfect.
[3] THE COURT: All right.
[4] So, ladies and gentlemen, we'll take our luncheon
[5] recess now, and we will reconvene hopefully at 10 after 2. So
[6] you have 70 minutes because we have some work to do. Ten after
[7] 2. Thank you.
[8] (Continued on next page)

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[1] A. Yes, I did.
[2] Q. The next slide, please.
[3] Can you tell jury what this shows?
[4] A. What this shows is essentially the area of new England for
[5] which I was calculating demand. I'm sorry about cutting off
[6] Maine, but it was the Maine, New Hampshire, Vermont,
[7] Massachusetts, Rhode Island, Connecticut area. And for that I
[8] calculated the demand for reformulated gasoline of 125 million
[9] barrels per year.
[10] Q. And can you tell the jury why it is 45 on one side and 125
[11] on the other?
[12] A. Yes, I can. The reason is that, like New York Harbor, New
[13] England's demand is satisfied from several different sources.
[14] New England also receives a large amount of its gasoline from
[15] imports from foreign countries and some that moves directly
[16] from either the mid-Atlantic, you know, this region down here,
[17] or all the way from the U.S. Gulf Coast.
[18] Q. Now, when you calculated your percentages for RFG, did you
[19] take into account all of the supply and demand into the harbor?
[20] A. Yes.
[21] Q. And did you prepare a graphic to show the jury how you
[22] calculated this percentage of fraction?
[23] A. Yes.
[24] MR. STACK: Can you go to slide 17, please.
[25] THE COURT: Actually, how would you feel about not

[1] (Jury not present)
[2] THE COURT: All right. Please be seated.
[3] You can go. Please be seated. I need a couple of
[4] minutes of the lawyers' time but it doesn't matter if you
[5] remain in the courtroom because you are on direct, you are
[6] welcome to talk to those lawyers. You just don't need to stay
[7] here for a moment. I need to talk to them about another quick
[8] matter.
[9] I said that I would place some reasoning on the record
[10] with respect to the public nuisance decision that I sent you
[11] last night, basically that there needs to be an injury to
[12] support the claim. I am just going to read a short little
[13] memo.
[14] The city agrees that if it cannot show an actual or
[15] future injury, it may not recover money damages for the public
[16] nuisance claim, although it does say it might still be able to
[17] get injunctive relief, and there is some support for this
[18] position in the case law. I cite, in particular, State v.
[19] Fermenta. I know you are all familiar with that.
[20] F-E-R-M-E-N-T-A, 630 N.Y.S.2d 884, a 1995 case, which says, and
[21] I quote: "It has been said that a court of equity will lend
[22] its aid to enjoin a threatened public nuisance wherever it
[23] clearly appears that the acts sought to be restrained will
[24] necessarily result in the creation or maintenance of a
[25] nuisance."

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[1] **MR. BONGIORNO:** Can you just reread that?

[2] **THE COURT:** Plus the word yes. Yes, can injury occur

[3] below a state standard?

[4] Yes, and I'll reread that sentence.

[5] **MR. CHAPMAN:** The only could possible confusion, MCL,

[6] you should tell them that is what maximum contaminant level

[7] means.

[8] **THE COURT:** No problem.

[9] Two. What weight should our previous 10 parts per

[10] billion finding have in deciding if an injury occurred?

[11] The answer I propose to say is that is your finding.

[12] You should not revisit that finding. You have found that when

[13] all the combined outflow of the six wells that make up Station

[14] 6, when they're all on, the contamination would peak at 10

[15] parts per billion.

[16] **MR. BONGIORNO:** Just in 2033.

[17] **THE COURT:** In 2033. My point is if I say that, of

[18] course, that leaves open the possibility of less than all six

[19] running at the same time. So they're not ever bound to 10.

[20] So this note has now been marked as Court Exhibit 11.

[21] What the clerk just showed me is Court Exhibit 10 is the second

[22] verdict sheet, Phase II verdict sheet and it did say, yes, it

[23] did say at what peak level will MTBE found in the combined

[24] outflow of the Station 6 wells and when will that occur?

[25] For the purpose of this question, "combined outflow"

[1] is the combination of all the water from all the wells that

[2] goes into the treatment facility. It is fair to say to them

[3] that, of course, assumes all six wells -- that combined

[4] outflow, all six wells. It is only fair to say that to them

[5] because that is what they answered on Page 2, all right?

[6] Anything further?

[7] **MR. BONGIORNO:** Judge, I know you said it. I

[8] apologize if I didn't catch it. On the first question, you're

[9] going to reread the charge?

[10] **THE COURT:** After the word, "yes."

[11] **MR. BONGIORNO:** It can and it cannot, it is up to

[12] them?

[13] **THE COURT:** Of course. Oh, yes, of course.

[14] **MR. CHAPMAN:** There is one other matter if I can raise

[15] with your Honor, but we can do it after the jury.

[16] **THE COURT:** Yes, one would think. How can you invent

[17] a matter that relates to these two questions? Okay.

[18] Is this the exhibit issue, Mr. Chapman?

[19] **MR. CHAPMAN:** Yes.

[20] **THE COURT:** You were supposed to look through each

[21] other's exhibits before they went into the jury room. I trust

[22] you did that so we don't create these problems over the years

[23] of trial so that something goes in that isn't in evidence.

[24] This isn't that bad because the defense put in highlighted

[25] versions of the exhibits instead of just the exhibit.

[1] **MR. CHAPMAN:** A tab, and --

[2] **THE COURT:** That is not appropriate. That is not

[3] appropriate.

[4] **MR. CHAPMAN:** I think, your Honor, what we would

[5] request, the exhibits be taken out, the tabs removed with some

[6] curative instruction.

[7] (The jury returned to the courtroom at exactly 3:25

[8] pm)

[9] **THE COURT:** Please be seated.

[10] You wrote a note almost a half hour ago. It takes us

[11] a while to gather. The first question said:

[12] "Can injury occur below a state standard?"

[13] The answer is yes, and it is actually at Page 3 of

[14] your charge. I'll reread it.

[15] On the other hand, to prove an injury, the city need

[16] not necessarily prove that its water is or will be contaminated

[17] by a concentration of MTBE that exceeds the maximum contaminant

[18] level set by regulatory authorities. I have already ruled the

[19] city may or may not be injured by MTBE contamination that is at

[20] or below the maximum contaminant level. It is up to you to

[21] determine whether the level of MTBE that you have found will be

[22] in the Station 6 wells in the future and will constitute an

[23] injury to the city.

[24] Maybe your confusion was the word "maximum contaminant

[25] level," also means "MCL," and the MCL is the state standard. I

[1] already told you here that the city need not necessarily prove

[2] its water will be contaminated by a concentration of MTBE that

[3] exceeds the MCL set by regulatory authorities. The short

[4] answer is yes.

[5] In other words, yes, injury can occur below a state

[6] standard if you so find.

[7] No. 2: "What weight should our previous 10 parts per

[8] billion findings have in deciding if injury occurred?"

[9] I will be looking at my screen a little bit, but the

[10] answer is that is your finding that you found in Phase II. I

[11] don't know if you have a copy of the Phase II verdict sheet in

[12] there, but I do, and you should not revisit that finding. You

[13] have found that when all of the six wells that make up the

[14] combined outflow of Station 6, when they're all on, the

[15] contamination would peak at 10 parts per billion in 2033.

[16] You see that in the exact question. At what peak

[17] level will MTBE be found in the combined outflow of the Station

[18] 6 wells and when will that occur? For the purpose of this

[19] question, "combined outflow" is the combination of all the

[20] water from all the wells that goes into the treatment facility.

[21] So you found when all are on, it is 10, and that is your

[22] finding and shouldn't be revisited.

[23] Does that answer both of your questions?

[24] Anybody have a follow-up question or still confused

[25] either of those questions?